

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 7
Bky. Case No. 04-44518

Jo Ann Witt,

Debtor.

NOTICE OF MOTION AND MOTION
OBJECTING TO EXEMPT PROPERTY

TO: THE COURT, UNITED STATES TRUSTEE, THE DEBTOR, AND HER ATTORNEY:

1. Dorraine A. Larison, Trustee of the bankruptcy estate of the above-named debtor, moves the court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 9:30 a.m. on November 3, 2004, in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 29, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven (7) days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. § 522, Bankruptcy Rule 5005 and 9014, Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on August 13, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 522, and Bankruptcy Rule 4003 and Local Rule 4003-1(a). This motion is filed under Bankruptcy Rule 9014 and Local Rules 9001-1 to

9001-6 and 9013-1 to 9013-5. Movant requests relief with respect to debtor's claims for exemption.

6. Debtor has claimed as exempt the following assets under 11 U.S.C. § 522(d)(5) which the trustee objects to as follows:

- a) Excess equity of \$302.00 in the debtor's homestead legally described as Kandiyohi County, Minnesota-Section 10, Township 119, Range 34, Lot 35, Block 3, Hoffer's Rolling Acres;
- b) Deposit account with Home State Bank;
- c) 2000 copies of self-published book;
- d) Digital camera and regular camera; and
- e) Sheltie dogs.

7. Debtor has claimed as exempt the following assets under 11 U.S.C. § 522(d)(3) which the trustee objects to as follows:

- a) Computer; and
- b) Piano.

8. The trustee objects to the debtor's claims of exemption for the items claimed exempt under 11 U.S.C. § 522(d)(5) on the following basis: The debtor has claimed the full exemption amount allowable under 11 U.S.C. § 522(d)(1); therefore, the value of the items claimed exempt under 11 U.S.C. § 522(d)(5) exceeds the value of \$975.00 as allowed for exemption under that statute.

9. The trustee objects to the debtor's claims of exemption for the items claimed exempt under 11 U.S.C. § 522(d)(3) on the following basis: The computer and piano do not fall within the type of property defined as exempt under 11 U.S.C. § 522(d)(3).

WHEREFORE, Applicant moves the court for an order sustaining trustee's objection to claimed exempt property and such other relief as may be just and equitable.

Dated this 13th day of October, 2004.

/e/ Dorraine A. Larison
Dorraine A. Larison
I.D. No. 203609
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
1010 West St. Germain
Suite 600
St. Cloud, MN 56301
(320) 252-4414
Attorneys for Trustee

VERIFICATION. I, Dorraine A. Larison, the movant declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Dated: October 13, 2004

/e/ Dorraine A. Larison
Dorraine A. Larison, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

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Chapter 7
Bky. Case No. 04-44518

Jo Ann Witt,

UNSWORN CERTIFICATE OF SERVICE

Debtor.

I, Jean Eisenschenk, declare under penalty of perjury that on October 13, 2004, I mailed the following documents:

NOTICE OF MOTION AND MOTION OBJECTING TO EXEMPT PROPERTY AND PROPOSED ORDER

by first class mail postage prepaid to each entity named below at the address stated below for each entity:

UNITED STATES TRUSTEE
1015 US COURTHOUSE
300 SOUTH FOURTH STREET
MINNEAPOLIS MN 55415

GEORGE HULSTRAND JR
ATTORNEY AT LAW
201 SW FOURTH STREET
WILLMAR MN 56201

JO ANN WITT
917 MCDERMOTT AVE
KANDIYOHI MN 56251

Executed on: October 13, 2004

/e/ Jean Eisenschenk
Jean Eisenschenk
GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.
Suite 600
1010 West St. Germain Street
St. Cloud, MN 56301

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

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Bky. Case No. 04-44518

Jo Ann Witt,

ORDER

Debtor.

At Minneapolis, Minnesota, _____, _____.

Upon the Objection to Claimed Exempt Property filed by the Trustee and upon all the files and records of the proceedings herein,

IT IS ORDERED:

1. The following items claimed exempt by the debtor under 11 U.S.C. § 522(d)(5) are not exempt to the extent that the total value of said items exceeds the amount of \$975.00 as allowed under the statute for exemption:

- a) Excess equity of \$302.00 in the debtor's homestead legally described as Kandiyohi County, Minnesota-Section 10, Township 119, Range 34, Lot 35, Block 3, Hoffer's Rolling Acres;
- b) Deposit account with Home State Bank;
- c) 2000 copies of self-published book;
- d) Digital camera and regular camera; and
- e) Sheltie dogs.

2. The debtor's computer and piano are not exempt under 11 U.S.C. § 522(d)(3).

Robert J. Kressel
UNITED STATES BANKRUPTCY
JUDGE